# In the Supreme Court of the United States

OCTOBER TERM, 1973

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No. 72-1587

LOUIS GAZZOLA, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

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After a jury trial in the United States District Court for the Southern District of New York, petitioner, a convicted felon, was convicted on one count of receiving a firearm transported in interstate commerce, in violation of 18 U.S.C. 922(h) and 18 U.S.C. App. 1202(a)(1), and on four counts of falsely denying that he was a convicted felon on forms used to purchase firearms, in violation of 18 U.S.C. 922(a)(6). He was sentenced to a term of imprisonment for six months and fined $2,000 for the violation of 18 U.S.C. 922(h) and 18 U.S.C. App. 1202(a)(1). Imposition of sentence on the other counts was suspended and, as to those counts, petitioner was placed on probation for three years. The court of appeals affirmed (Pet. App. A-1 to A-2). Petitioner challenges only his conviction under 18 U.S.C. 922(h) and 18 U.S.C. App. 1202(a)(1).

On August 24, 1971, petitioner purchased four shotguns at a sporting goods and auto parts store in Newburgh, New York. In making these purchases, petitioner filled out four separate forms, on each of which he stated that he had never been convicted of a felony. In fact, petitioner had been convicted of robbery in 1952. One of the guns had been purchased by the store from a gun distributor in Middletown, New York, which had obtained the gun in January 1967 from a firm in New Haven, Connecticut.

Petitioner contends that the government did not establish sufficient nexus with interstate commerce to sustain a conviction under 18 U.S.C. 922(h) and 18 U.S.C. App. 1202(a)(1). His contention is without merit. As this Court has held, "the Government meets its burden here if it demonstrates that the firearm received has previously traveled in interstate commerce." *United States* v. *Bass,* 404 U.S. 336, 350. See, also, *United States* v. *Giannoni,* 472 F. 2d 136 (C.A. 9), certiorari denied, April 16, 1973, No. 72-6140.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
*Solicitor General.*

JULY 1973.

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